

joan\smith-patenaude\pleadings\complaint12/7/2004

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TAMARA M. SMITH
1740 Georges Lane
Philadelphia, PA 19131

Plaintiff

vs.

PATENAUDE & FELIX, A.P.C.
4545 Murphy Canyon Road, 3rd Floor
San Diego, CA 92123

Defendant

CIVIL ACTION

NO.

COMPLAINT

I. INTRODUCTION

1. This is an action for damages brought by a consumer pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692 which prohibits debt collectors from engaging in misrepresentation and deceptive collection practices.

II. JURISDICTION

2. Jurisdiction arises under 15 U.S.C. §1692k and 28 U.S.C. §1337.

III. PARTIES

3. Plaintiff is Tamara M. Smith. She is a consumer who resides in Philadelphia, Pennsylvania at the address captioned.

4. Defendant, Patenaude & Felix, A.P.C. (hereinafter "Patenaude") is believed to be a California corporation with a principal place of business in San Diego, California and a mailing address as captioned.

5. Patenaude regularly uses the mails and telephone in an attempt to collect debts alleged to be due another. Patenaude is a “debt collector” as that term is contemplated in the FDCPA, 15 U.S.C. §1692a(6).

IV. STATEMENT OF CLAIM

6. On or about October 5, 2004 defendant sent to Smith a collection notice seeking to collect on an account alleged to be due to Providian National Bank. A copy of the letter is attached hereto as Exhibit “A”, redacted per local rule.

7. In the body of the letter, defendant debt collector states “if you wish to eliminate further legal action, contact us immediately...”. The letter is signed by a David C. Scott, Esquire as “attorney for plaintiff.”

8. The reference to “further legal action” states or implies that a lawsuit has been filed. No lawsuit to collect the amount had been filed as of the date of the writing of the letter.

9. The reference to a “plaintiff” also states or implies that a lawsuit has been filed, as a creditor does not become a plaintiff until the filing of suit.

10. Defendant’s collection notice misrepresents the legal status of the matter and the pendency of a legal action to collect the debt.

COUNT I

11. Plaintiff repeats the allegations contained above as if the same were here set forth at length.

12. Defendant, in its collection notice has misrepresented the legal status of the matter. Defendant has violated §1692e, 1692e(2) and 1692e(10).

WHEREFORE, Plaintiff Tamara M. Smith demands judgment against defendant Patenaude & Felix, A.P.C. for:

- (a) Damages;
- (b) Attorney's fees and costs;
- (c) Such other and further relief as the Court shall deem just and proper.

V. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all issues so triable.

Respectfully submitted:

Date: _____

CARY L. FLITTER
Attorney for Plaintiff

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